



June 11, 2025

Crypto Task Force
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Re: Crypto Task Force

To the Crypto Task Force:

Better Markets¹ appreciates the opportunity to provide feedback to the Crypto Task Force. We know that the Crypto Task Force, in conjunction with the rest of the SEC's staff, has issued numerous guidance documents in the last few months purporting to provide clarity regarding certain issues in the crypto space. But these statements have been issued without prior notice to the public. And because the SEC did not alert the public to the specific policy positions it wanted to adopt, the statements do not address the numerous concerns the public might have had with deregulatory actions pertaining to an industry "rife with fraud, scams, and theft."² We urge the Crypto Task Force in the future to proceed through notice-and-comment rulemaking.

The Crypto Task Force's decision to proceed through guidance rather than notice-and-comment rulemaking is especially troubling because both the current Chair and the head of the Crypto Task Force have previously expressed a preference for notice-and-comment rulemaking as well as concerns about acting through guidance. For example, on June 3, Chair Atkins said during his testimony before the Senate Appropriations Subcommittee on Financial Services that with respect to crypto "policymaking will be done by notice-and-comment rulemaking."³ And in his keynote address at the Crypto Task Force Roundtable on Tokenization on May 12, he criticized as "a grave error" the issuance of Staff Accounting Bulletin (SAB) 121, which stated that companies holding crypto assets for customers face unique risks and should therefore reflect

¹ Better Markets is a non-profit, non-partisan, and independent organization founded in the wake of the 2008 financial crisis to promote the public interest in the financial markets, support the financial reform of Wall Street, and make our financial system work for all Americans again. Better Markets works with allies—including many in finance—to promote pro-market, pro-business, and pro-growth policies that help build a stronger, safer financial system that protects and promotes Americans' jobs, savings, retirements, and more.

² David Yaffe-Bellany, *Under Trump, U.S. Increasingly Pulls Back From Crypto Crackdown*, N.Y. Times (Feb. 28, 2025), <https://www.nytimes.com/2025/02/28/technology/crypto-sec-trump.html>.

³ Paul S. Atkins, Chairman, *Testimony Before the United States Senate Subcommittee on Financial Services and General Government* (June 3, 2025), <https://www.sec.gov/newsroom/speeches-statements/testimony-atkins-060325>.

those assets as liabilities on their balance sheets, saying that the staff “had no place to act so broadly in place of Commission action and without notice-and-comment rulemaking.”⁴

Commissioner Peirce, the head of the Crypto Task Force, also criticized SAB 121 on the ground that it was not promulgated through notice-and-comment rulemaking.⁵ Commissioner Peirce said that rules of such broad effect “should be set by the full Commission, not by staff.”⁶ Commissioner Peirce’s view was that the Commission “appropriately relies on the staff to work through difficult technical questions about the application of the law to particular facts and circumstances, but should not leave to the staff decisions that broadly govern market practices.”⁷

We agree that the SEC is best served by making policy through notice-and-comment rulemaking. Notice-and-comment rulemaking ensures that the agency acts with an open mind. It also legitimizes the agency’s action by allowing the public to express opposition to specific policy proposals. Here, the Crypto Task Force has articulated numerous policy positions that the public might have wished to oppose. It has also acted through the staff, rather than the Commission, which means there was no Commission vote and hence no accountability on the part of the Commissioners. We urge the Crypto Task Force to do better in the future.

I. Notice-and-comment rulemaking ensures that the agency acts with an open mind.

Notice-and-comment rulemaking is “one of the greatest inventions in modern government” because “agencies must be open to information provided by all interested parties.”⁸

Under Section 553 of the Administrative Procedure Act (APA), federal agencies engaged in rulemaking must publish in the Federal Register a ‘general notice of proposed rule making’ and then allow for public comment, affording ‘interested persons an opportunity to participate in the rule making through submission of written data, views, or arguments with or without opportunity for oral presentation. The agency, ‘[a]fter consideration of the relevant matter presented,’ must then issue a final rule that includes a preambulatory ‘concise statement of . . . basis and purpose.’⁹

The courts have fleshed out what this statutory language means in practice:

⁴ Paul S. Atkins, Chairman, *Keynote Address at the Crypto Task Force Roundtable on Tokenization* (May 12, 2025), <https://www.sec.gov/newsroom/speeches-statements/atkins-remarks-crypto-roundtable-tokenization-051225-keynote-address-crypto-task-force-roundtable-tokenization>.

⁵ Commissioner Hester M. Peirce, *At the SEC: Nothing But Crickets Remarks at SEC Speaks* (Apr. 2, 2024), <https://www.sec.gov/newsroom/speeches-statements/peirce-remarks-sec-speaks-040224>.

⁶ *Id.*

⁷ *Id.*

⁸ Wendy Wanger et al., *Deliberative Rulemaking: An Empirical Study of Participation in Three Agency Programs*, 73 Admin. L. Rev. 609, 616 (2021) (internal quotation marks and citation omitted).

⁹ Shoba Sivaprasad Wadhia and Christopher J. Walker, *Assessing Visions of Democracy in Regulatory Policymaking*, 21 Geo. J.L. & Pub. Pol’y 389, 400 (2023) (alteration and omission in original) (citing 5 U.S.C. § 553(b), (c)).

Agencies must issue a detailed notice of the proposed rule and disclose the underlying rationales and supporting data for public scrutiny. They must also compile a publicly available rulemaking record. . . . And it is not enough that the agency issue a ‘concise general statement of basis and purpose.’ Today, these preambles are often quite voluminous, in large part because courts require that ‘[a]n agency must consider and respond to significant comments receiving during the period for public comment.’¹⁰

Courts “often strike down rules when agencies fail to adequately address issues raised.”¹¹ However, guidance documents “are not subject to any of these requirements.”¹²

Notice-and-comment rulemaking thus “allows all stakeholders in a regulatory decision to be heard before a decision is made and ensures that the agency responds to relevant comments.”¹³ Conversely, because guidance documents “are generated without notice and comment, industry and public alike lose the benefits of informal rulemaking,” such as political accountability, public participation, and forcing the agency to consider alternative viewpoints.¹⁴

The important purposes of this notice and comment procedure cannot be overstated. The agency benefits from the experience and input of comments by the public, which help ensure informed agency decisionmaking. The notice and comment procedure also is designed to encourage public participation in the administrative process. Additionally, the process helps ensure that the agency maintains a flexible and open-minded attitude towards its own rules, because the opportunity to comment must be a meaningful opportunity.¹⁵

This last point should not be overlooked. The Crypto Task Force does not appear to be open-minded. Instead, it seems only to want to get the SEC “out of the way of anything and everything in the crypto space.”¹⁶ The use of guidance documents facilitates the Crypto Task Force’s ability to do this unfettered because it need not respond to any public feedback. So the Crypto Task Force does not need to keep an open mind; it can simply articulate its preferred policy.

¹⁰ *Id.* (citations omitted).

¹¹ Stephen M. Johnson, *#BetterRules: The Appropriate Use of Social Media in Rulemaking*, 44 Fla. St. U. L. Rev. 1379, 1393 (2017).

¹² Connor N. Raso, *Strategic or Sincere? Analyzing Agency Use of Guidance Documents*, 119 Yale L.J. 782, 788 (2010).

¹³ Michael Kolber, *Rulemaking Without Rules: An Empirical Study of Direct Final Rulemaking*, 72 Alb. L. Rev. 79, 86 (2009).

¹⁴ *Id.* at 87.

¹⁵ *N.C. Growers’ Ass’n v. United Farm Workers*, 702 F.3d 755, 763 (4th Cir. 2012) (citations omitted) (internal quotation marks omitted).

¹⁶ Commissioner Caroline A. Crenshaw, *Muddying the Waters: More Confusion on Crypto Asset Security Status* (May 31, 2025), <https://www.sec.gov/newsroom/speeches-statements/crenshaw-statement-crypto-asset-security-status-053125>.

II. The Crypto Task Force’s actions lack legitimacy without notice-and-comment rulemaking.

This choice to prioritize expediency by acting through guidance rather than rulemaking has serious consequences for the legitimacy of the Crypto Task Force’s actions. That is because a “sizeable administrative law literature links procedural rigor with agency legitimacy.”¹⁷

[T]he notice-and-comment requirement ‘recognizes that regulatory decisionmaking needs special forms of legitimation that enhance popular participation. An open notice-and-comment process, coupled with careful study of the comments received and publication of a report with fulsome responses to major comments, serves that need. Conversely, when agencies do not utilize notice-and-comment procedures—for instance, when they issue nonlegislative rules or publish guidance documents that are not subject to the APA—their decision to forgo notice-and-comment ‘jeopardizes administrative legitimacy.’¹⁸

So notice-and-comment rulemaking “strengthens [the] legitimacy” of agency action.¹⁹

Notice-and-comment does this by making agencies accountable. The “dominant understanding of the APA’s notice-and-comment process” is “as a tool for legitimating administrative rulemaking by holding agencies democratically accountable to the public.”²⁰

Agency accountability is one of the fundamental goals of the notice-and-comment procedure of section 553 of the APA. Public participation discourages arbitrary agency actions and assures that when an agency creates a legislative rule, it will have before it the facts and information relevant to a particular problem.²¹

In other words, the requirement that agencies respond to public comments is what makes agencies accountable to the public and therefore what makes their actions legitimate.

Agencies must be held accountable if their actions are to be seen as legitimate. Accountability flows from meaningful constraints on agency authority. Notice-and-comment is a powerful constraint: it ensures that agency action is seen as legitimate because it provides direct accountability to the public, which means that its choices will more closely reflect the popular will.²²

¹⁷ Brian D. Feinstein, *Legitimizing Agencies*, 91 U. Chi. L. Rev. 919, 941 (2024).

¹⁸ *Id.* at 939-40 (citations omitted).

¹⁹ Robert Knowles, *National Security Rulemaking*, 41 Fla. St. U. L. Rev. 883, 897 (2014).

²⁰ Emily S. Bremer, *The Undemocratic Roots of Agency Rulemaking*, 108 Cornell L. Rev. 69, 73 (2022).

²¹ Christine M. Humphrey, *The Food and Drug Administration’s Import Alerts Appear to be “Misbranded,”* 58 Food and Drug L.J. 595, 600 (2003).

²² Knowles, 41 Fla. St. U. L. Rev. at 897.

Notice and comment legitimizes agency action by providing “a channel that allows interested persons to exercise political power by indicating mass opposition to a proposed rule.”²³

The public had no opportunity to indicate mass opposition to the various policy positions announced in the Crypto Task Force’s numerous guidance documents. The Crypto Task Force’s request for input on 50 questions in the crypto space is no substitute for notice of a specific policy proposal, an opportunity to comment on that proposal, and a requirement that the SEC respond to meaningful comments.²⁴ Indeed, the Crypto Task Force’s guidance documents do not address any comments that it has received. The prior administration was criticized for having too many rules with too short comment periods that prevented meaningful comments. A list of 50 questions, instead of a specific policy proposal with an opportunity to comment and an obligation to respond to those comments before formulating policy, is no better. The Crypto Task Force’s work cannot be seen as legitimate unless it is the product of notice-and-comment rules.²⁵

That is because guidance documents such as those issued by the Crypto Task Force avoid procedures intended to “facilitate public participation in the regulatory process.”²⁶ The most important of these are the requirements that the agency notify the public of proposed rules, allow the public to comment on the proposals, and consider the comments before issuing a final rule.²⁷ Agencies that regulate via guidance documents therefore “both escape the constraints of current law and forgo the often important information others provide in the notice-and-comment process.”²⁸ They also avoid the transparency of the rulemaking process, “which renders the agency more accountable for its decisions.”²⁹ Guidance documents thus “allow agencies to make policy secretly and unilaterally, undermining the legitimacy of the administrative process.”³⁰

[G]uidance documents arouse less attention and opposition. Agencies can generally issue a guidance document without attracting advance publicity. The agency therefore

²³ Michael Asimow, *Interim-Final Rules: Making Haste Slowly*, 51 Admin. L. Rev. 703, 708 (1999).

²⁴ See, e.g., *United Church Bd. for World Ministries v. SEC*, 617 F. Supp. 837, 840 (D.D.C. 1985) (“A general request for comments is not adequate notice of a proposed rule change.”); Neenah Estrella-Luna, *Public Participation in Environmental Decision-Making*, 22-SUM Del. Law. 11, 14 (2004) (stating that “public participation is no substitute for the legal protections afforded through notice and comment requirements.”).

²⁵ See Lynn E. Blais and Wendy E. Wagner, *Emerging Science, Adaptive Regulation, and the Problem of Rulemaking Ruts*, 86 Tex. L. Rev. 1701, 1701 (2008) (“These informal statements of agency policy are easier to implement than notice-and-comment rulemaking, but . . . they bypass the public-input process that brings legitimacy, accountability, and enhanced accuracy to notice-and-comment rulemaking.”).

²⁶ Raso, 119 Yale L.J. at 785.

²⁷ Gregory M. Dolin, M.D., *Speaking of Science: Introducing Notice and Comment into the Legislative Process*, 2014 Utah L. Rev. 243, 271 (2014).

²⁸ Federal Statutes and Regulations, 114 Harv. L. Rev. 369, 375 (2000).

²⁹ *Id.* at 375 n.58.

³⁰ Raso, 119 Yale L.J. at 787.

has the opportunity to set a new status quo before opponents mobilize. This status quo may generate self-reinforcing feedbacks that strengthen the agency's position.³¹

Essentially, the Crypto Task Force has gotten it backwards. Perhaps recognizing the importance of notice-and-comment rulemaking, it has said that while it has already started to provide guidance it is “moving expeditiously to codify our thinking through notice-and-comment rulemaking.” But an agency is not supposed to stake out a position through guidance and then use notice-and-comment rulemaking to “codify” that position. “Once an agency has publicly staked out a position and given effect to that position . . . forces like regulatory inertia, status quo bias, confirmation bias, and commitment bias all make it less likely the agency will deviate from its position.”³² Instead, the agency is supposed to formulate a proposal, solicit and receive comments on that proposal, and determine what action to take on the basis of those comments.³³ After all, what is the point of soliciting and receiving public input if the purpose of the rulemaking is simply to codify a position that the agency has already determined to take?³⁴

This becomes especially important when an agency faces political pressure to reach a preordained outcome, such as might occur when the White House has announced a preferred outcome early in the rulemaking process. Facing such pressure, an agency has great incentive to find data that supports the preordained outcome and to interpret the data it has to support that outcome. It might even go so far as to shortcut rational deliberation to reach the desired outcome. Notice-and-comment thus helps prevent the agency from engaging solely in self-confirming searches and interpretations of evidence and presenting questionable justifications for the rule it ultimately adopts.³⁵

Notice-and-comment rulemaking not only prevents the agency from reaching a preordained outcome but also prevents the agency from adopting extreme positions favored by powerful firms. “Because there is no notice-and-comment period, a guidance document can be issued much more expeditiously than a regulation, and because there is no public scrutiny, a guidance can stake out a position more extreme (in any direction) than would likely be the case with a regulation.”³⁶ And because “there is less transparency in non-notice-and-comment rulemaking, those modes of regulation would quite plausibly be more susceptible to regulatory capture than

³¹ *Id.* at 799.

³² Kristin E. Hickman and Mark Thomson, *Open Minds and Harmless Errors: Judicial Review of Postpromulgation Notice and Comment*, 101 Cornell L. Rev. 261, 287 (2016).

³³ See 32 Charles Alan Wright & Arthur R. Miller, *Federal Practice & Procedure* § 8183 (2d ed.) (“Agencies are, of course, supposed to learn from the notice-and-comment process and to shape their final rules based on information supplied from interested persons in the public.”).

³⁴ See Jessica Mantel, *Procedural Safeguards for Agency Guidance: A Source of Legitimacy for the Administrative State*, 61 Admin. L. Rev. 343, 398 (2009) (stating that “soliciting comments prior to issuance of final guidance would avoid the problem that plagues post-adoption notice-and-comment: an agency’s lacking an open mind and being unwilling to truly reconsider its guidance”).

³⁵ Mark Seidenfeld, *Rethinking the Good Cause Exception to Notice-and-Comment Rulemaking in Light of Interim Final Rules*, 75 Admin. L. Rev. 787, 801-02 (2023).

³⁶ Burton J. Fishman, *Justice Department Limits Use of Guidances*, 15 No. 7 Fed. Emp. L. Insider 5 (2018).

the notice-and-comment process, as they do not create a public record of interest groups' input that can be monitored as easily by organizations with widely diverging perspectives."³⁷

III. The Crypto Task Force's meme coins statement is a good example of how the failure to make policy through notice-and-comment rulemaking leads to extreme positions.

The Crypto Task Force's work reflects the tendency of agencies that act through guidance rather than rulemaking to adopt extreme positions consistent with industry views but not the public interest. A good example is its statement that generally meme coins do not involve the offer and sale of securities under the federal securities laws but instead are "akin to collectibles."³⁸ This would probably surprise many meme coin investors.

Meme coins are a type of crypto asset inspired by a celebrity or internet trend. Most involve a silly name and hyped-up narrative, yet they still manage to attract billions of dollars from speculative traders.³⁹ That's because retail investors see the hype and have a fear of missing out on an opportunity to make money.⁴⁰ Usually, however, retail investors who buy meme coins only suffer losses.⁴¹ Given the risks, it's astounding that the SEC would declare that neither meme coin purchasers nor holders are protected by the federal securities laws.

The way in which retail investors often lose money in meme coins reveals the problem with the SEC seeming to categorically exclude them from the definition of a security. Developers of the token and other insiders usually hold a large share of the total supply; once enough investors buy in, the insiders cash out, causing the price to fall precipitously:

What many fail to realize, however, is that the game is often rigged before they even place their bets. . . . The cycle of speculation has remained consistent: a

³⁷ Robert Romano, *Does Agency Structure Affect Agency Decisionmaking? Implications of the CFPB's Design for Administrative Governance*, 36 Yale J. on Reg. 273, 320 (2019).

³⁸ Staff Statement on Meme Coins, *Division of Corporation Finance* (Feb. 27, 2025), <https://www.sec.gov/newsroom/speeches-statements/staff-statement-meme-coins>.

³⁹ Chris Groshong, *The Meme Coin Boom: Digital Prospectors Going Bust*, *Forbes* (Mar. 12, 2025), <https://www.forbes.com/sites/chrisgroshong/2025/03/12/the-meme-coin-boom-digital-prospectors-going-bust/>.

⁴⁰ Merav Ozair, PhD, *Why Are Meme Coins So Popular? Understanding How They Work and Unveiling the Hype*, *Nasdaq* (Jun. 8, 2022), <https://www.nasdaq.com/articles/why-are-meme-coins-so-popular-understanding-how-they-work-and-unveiling-the-hype>.

⁴¹ Michael Adams, *What Are Meme Coins? Are They Worth Investing In?*, *Forbes* (May 13, 2024), <https://www.forbes.com/advisor/investing/cryptocurrency/what-are-meme-coins-are-they-worth-investing-in/>; see also David Krause, *Beyond the Hype: A Meme Coin Reality Check for Retail Investors* (July 11, 2024), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4891841 ("In recent years, meme cryptocurrency coins have surged in popularity, evolving from online jokes and viral social media trends to become a key point of interest for young retail investors globally. However, this rapid ascent is accompanied by significant risks due to the volatile and speculative nature of these assets, as well as the presence of some outright scams").

meme coin goes viral, early adopters and insiders profit from the hype, and latecomers are often left holding worthless tokens after the inevitable crash.⁴²

In the world of crypto, this is called a rug pull.⁴³ But it's akin to a stock pump and dump.⁴⁴ In those schemes, insiders hype a stock to create a buying frenzy that pumps up its price, and then those same insiders dump their shares of the stock by selling at the inflated price.⁴⁵ This typically causes the stock price to drop precipitously, causing the non-insider investors to lose money. For the federal securities laws to protect investors who suffer losses in these pump and dump schemes but not investors in remarkably similar crypto rug pulls makes no sense.

On the contrary, when investors suffer losses of \$250 million, the federal securities laws should protect them regardless of whether the scheme involves stocks or meme coins. That's what happened after the president of Argentina promoted a coin called \$Libra by posting that the "world wants to invest in Argentina" and directing his followers to a site where they could buy the token.⁴⁶ Over the next few hours, thousands of people invested, and \$Libra's value skyrocketed.⁴⁷ Then, the people behind \$Libra, who controlled 80% of the coins, cashed out for at least \$90 million.⁴⁸ This caused the price to collapse, which left retail investors with losses of \$250 million.⁴⁹ It seems unlikely these investors thought they were buying "collectibles."

Investors in the meme coin promoted by Hailey Welch probably also did not think they were buying collectibles. Welch rose to fame through a viral Tik Tok video, and after capitalizing on her newfound fame through merchandise sales and a podcast, she launched a meme coin, which was promoted with promises that it would "redefine the crypto space."⁵⁰ The token's price rose quickly after its launch but then plummeted by 95%; investors lost millions.⁵¹

⁴² Groshong, *supra* note 39.

⁴³ Matt Stieb, *They Just Want to Take Your Money*, New York Magazine (Feb. 24, 2025), <https://nymag.com/intelligencer/article/dave-portnoy-kanye-meme-coin-rug-pull.html>.

⁴⁴ Cedric Thompson and Peter Gratton, *The Hidden Dangers of Buying Meme Coins You Need to Know*, Investopedia (Jan. 30, 2025), <https://www.investopedia.com/top-risks-of-buying-meme-coins-8782157>.

⁴⁵ *Pump and Dump Schemes*, <https://www.investor.gov/introduction-investing/investing-basics/glossary/pump-and-dump-schemes>.

⁴⁶ Ben Weiss, *Argentine President Javier Milei endorsed a memecoin that lost \$4 billion in hours. Now a judge is investigating him for fraud*, Fortune (Feb. 18, 2025), <https://fortune.com/crypto/2025/02/18/javier-milei-memecoin-libra-cryptocurrency-crash-argentina-federal-judge-investigation/>.

⁴⁷ Jack Nicas and David Yaffe-Bellany, *Melei, \$Melania and Memecoins: Unraveling Argentina's Crypto Fiasco*, N.Y. Times (Feb. 28, 2025), <https://www.nytimes.com/2025/02/28/world/americas/argentina-crypto-scandal-president.html>.

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ Sarah Tan, *From Viral Star to Crypto Scapegoat: Is Haliey Welch Dead, Going 'Tuah' Prison or Lying Low?*, Int'l Bus. Times (Dec. 17, 2024), <https://www.ibtimes.co.uk/viral-star-crypto-scapegoat-haliey-welch-dead-going-tuah-prison-lying-low-1729548>.

⁵¹ *Id.*

Unsurprisingly, insiders who controlled 90% of the tokens and sold them at their peak caused the crash.⁵² Analysts suggest that the token launch involved coordinated efforts to maximize insider profits at the expense of public investors.⁵³ Some of those investors lost their life savings and have since filed complaints with the SEC alleging that the launch was a pump and dump.⁵⁴ It's understandable that investors would think the SEC would regulate these types of offerings, but the SEC's meme coin guidance indicates that the investors will be left to fend for themselves; indeed, the SEC recently announced that it had closed its investigation into Welch.⁵⁵

These examples show why meme coins are often considered simply digital Ponzi schemes that enrich insiders at the expense of retail investors.⁵⁶ They also show why notice-and-comment rulemaking is essential to prevent agency action contrary to the public interest.

Agencies are more likely to make wise and well-informed policy decisions if they solicit, receive, and consider data and views from all citizens who are likely to be affected by a policy decision. Similarly, agencies are more likely to make policy decisions that are consistent with the views of the people . . . if they provide public notice of their intention to make a particular policy decision.”⁵⁷

It seems likely that meme coin investors might have wanted notice that the Crypto Task Force was contemplating issuing a statement excluding meme coins from the protection of the federal securities laws and the opportunity to comment on such a specific policy proposal.

The SEC's guidance on meme coins is especially shocking because the staff admits that meme coins are speculative, experience significant market price volatility, and are often accompanied by statements regarding their risks. These characteristics do not make meme coins sound like “collectibles” such as artwork, stamps, or baseball cards. That's not surprising, because meme coins are not rare, and investors do not attempt to collect a set of meme coins or trade them for other meme coins. Instead, investors purchase meme coins as an investment. Investors could have explained their reasons for purchasing meme coins, detailed their losses, and articulated their concerns about a policy that excluded meme coins from the protection of the securities laws had the SEC proposed the policy through notice-and-comment rulemaking.

⁵² *Id.*

⁵³ Niloy Chakrabarti, *Hawk Tuah Haliey Welch's Crypto Team Nets £2.59M Amid Botched Token Launch, Fans File SEC Complaints*, Int'l Bus. Times (Dec. 14, 2024), <https://www.ibtimes.co.uk/hawk-tuah-haliey-welchs-crypto-team-nets-259m-amid-botched-token-launch-fans-file-sec-complaints-1729511>.

⁵⁴ Tan, *supra* note 50.

⁵⁵ Aislinn Keely, *SEC Closed Inquiry Into Hawk Meme Coin, Promoter Says*, Law360 (Mar. 31, 2025), <https://www.law360.com/articles/2317949/sec-closed-inquiry-into-hawk-meme-coin-promoter-says>.

⁵⁶ Alan Suderman and Isabel Debre, *Argentina's crypto scandal dings Milei, involves strange mix of characters*, Associated Press (Feb. 21, 2025), <https://apnews.com/article/argentina-milei-meme-coins-crypto-melania-e83b5ffd61b1dbc9e7c1272096d39aaa>.

⁵⁷ Richard J. Pierce, Jr., *Seven Ways to Deossify Agency Rulemaking*, 47 Admin. L. Rev. 59, 86 (1995).

Conclusion

The SEC must remember that the use of guidance documents undermines “the legitimacy of the rules produced by removing even the pretense of public access and participation.”⁵⁸

There is also a strong policy behind encouraging notice and comment: It protects due process values and enhances the legitimacy of agency action. As Professor Asimow has written: ‘Public participation promotes fundamental democratic values by enhancing the responsiveness of agencies to the interest groups affected by regulation. It opens the process to groups and individuals with discordant points of view who might otherwise not have been heard during the agency’s routine process of consultation with the public. In short, through advance notice and comment, every constituency has an opportunity to participate in a meaningful manner in making the laws that will affect it.’⁵⁹

With notice-and-comment rulemaking, the SEC would have to provide notice of the specific policies it was considering in the crypto space, would have to provide the public with an opportunity to comment on the specific proposals, and would have to address those comments in adopting any specific policies. The SEC would also likely have to schedule public meetings to both propose and adopt these policies, which would not only allow the public to attend but would also provide notice of when the agency was considering acting on the proposals. Here, by contrast, the public has had no warning about either the timing or substance of the Crypto Task Force’s specific policy pronouncements. This process delegitimizes those pronouncements.

We hope these comments are helpful to the Commission and the Crypto Task Force.

Sincerely,



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⁵⁸ Jody Freeman, *Collaborative Governance in the Administrative State*, 45 UCLA L. Rev. 1, 10 (1997).

⁵⁹ Peter A. Appel, *Administrative Procedure and the Internal Revenue Service: Delimiting the Substantial Understatement Penalty*, 98 Yale L.J. 1435, 1450-51 (1989) (quoting Michael Asimow, *Nonlegislative Rulemaking and Regulatory Reform*, 1985 Duke L.J. 381, 402 (1985)).